IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal Lodging no 350 of 2004
in
Misc Petition No. 57 of 200l

Sharad Ruia and anr.. appellants
vs
SICOM Limitedd ...respondents

Mr.M.U.Pandey for appellants
Mr. P.V.Shah for respondents

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.
Dated l7.l.2005

P.C:
Heard advocates for the parties.

l. This appeal is directed against the order of the learned single Judge passed in a petition under section 3l of the State Financial Corporation Act, l95l. By this order the learned single Judge has made the petition absolute in terms of prayer clause (a) to the extent of Rs. l,74,29,720 with future interest on the principal amount of Rs.90,l5,726 at the rate of l2% p.a. after 7.9.200l until payment or realisation.

2. There is no dispute that the respondents SICOM had sanctioned short term loan of Rs.l crore to Ruia Hospitality Limited (Borrower company for short). The appellants are directors of the borrower company and they executed a guarantee in

favour of SICOM promising to pay jointly and severally to the SICOM on demand a sum of Rs.l crore with interest at the rate of 23% p.a. The borrower company failed to repay the loan amount and consequently the respondents invoked guarantee furnished by the appellants and petition was presented in this court under section 3l of the Act which came to be made absolute by the order under appeal.

3. Mr.Pandey, learned counsel appearing for the appellants raised three contentions before us which were also raised before the learned single Judge. The first contention is that the respondents had taken over the immovable property of the principal debtor and consequently the guarantee which has been furnished by the appellants cannot be invoked. This defence is untenable in view of the clear provision in the guarantee agreement especially clauses 5,6.8 and l6 which are referred to in the order of the learned single Judge. It is apparent from the deed of guarantee that the guarantee can be enforced notwithstanding that any of the securities specified in the security documents are outstanding or unrealised. The liability of the guarantors is joint and several with the liability of the principal debtor for the repayment of the

loan. The guarantee provides that the respondent is entitled to act as if the guarantors were and are principal debtors. The guarantors have specifically waived all the rights conferred on them under sections l33, l34, l35, l39 and l4l of the Indian Contract Act. Consequently the first submission of Mr. Pandey is liable to be rejected.

4. The second submission is that the principal debtor has not been joined to this proceeding and therefore determination of liability will have to be kept in abeyance. This submission requires to be stated only to be rejected, in asmuch as under section 3l(l)(aa) the respondent has a right to enforce the liability of the surety in view of clause l6 of the deed of guarantee. The third submission is that the interest is not properly calculated. It appears that by order dated l9.7.2002 the respondent was directed to furnish statement of account to find out whether the calculations were in accordance with the directions of the Supreme Court in Central Bank of India vs Ravindra, 2002 (2) SCC 75l.In pursuance to that order further affidavit has been filed by the respondent. No objection has been raised on behalf of the appellants to the computation that has been filed filed in the court. Thus this defence is

also without any substance.

In the result appeal is dismissed.